

OFFICE OF THE CITY ATTORNEY

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CONFIDENTIAL – ATTORNEY WORK PRODUCT

TO: Officer Timothy Birkholz, Metro Transit Police Department

FROM: Stephen Christie
Assistant St. Paul City Attorney

SUBJECT: Case Disposition: **DECLINE**
CN# 17032344

DATE: March 2, 2018

The above noted case has been reviewed and prosecution of the case is being DECLINED for the follow reason(s):

- ☒ Insufficient Evidence
- ☐ Facts/Circumstances Do Not Support Charges

Notes:

In the opinion of this office, the investigation clearly establishes that Mr El Maarouf operated a light rail train in an unsafe manner which was responsible for the collision with a motor vehicle on July 15, 2017.

Criminal statutes, including the definition of terms, are to be strictly construed in favor of the accused. *State v. Colvin*, 645 N.W.2d 449, 452 (Minn. 2002). The definition of a “motor vehicle” for purposes of the Criminal Vehicular Operation statutes found in Chapter 609 (Criminal Code) clearly applies to a light rail train. Minn.Stat. 609.609.2111(b); 609.52, subd. 1(10)(a self-propelled device..”whether [it] is operated on land, rails, water, or in the air.”) As already determined by the Ramsey County Attorney’s Office, there is insufficient evidence of gross negligence for any level of CVO charge.

The familiar charges of Disobeying a Semaphore or Careless Driving are violations of Minnesota statutes found in Chapter 169 (the Traffic Code), and that chapter contains its own set of definitions or terms which “shall” be applied for its purposes. Minn.Stat. 169.011, subd. 1; see *a/so* Minn.Stat. 169.06 & .13. In the Traffic Code, the definition of “vehicle” specifically excludes a rail train. Minn.Stat 169.011, subd. 92 (every transportation device “excepting devices used exclusively upon stationary rails or tracks”). If a rail train is not even a “vehicle” for purposes of the Traffic Code, it also cannot be a “motor vehicle” in that chapter. See Minn.Stat. 169.011, subd. 42. Thus there can be no criminal charges in this case for any violation of the Traffic Code because it does not apply to the operation of a rail train.

Despite the heavy preemption of state law by federal rail safety laws, specifically the Federal Railroad Safety Act, there is still a Minnesota Statute which criminalizes violations of rail safety duties; however, it only applies to intentional violations of duty. See Minn.Stat. 219.568 (a conductor who commits a “willful violation or omission of duty” which endangers others is guilty of a misdemeanor). In this particular case, the evidence clearly supports the conclusion of the Metro Transit Police Department that the crash was the result of an “unintentional accident.” Collision Reconstruction Report prepared by Officer Birkholz, page 49.

In conclusion, while Mr El Maarouf’s operation of the light rail train may have been careless or negligent when he disobeyed the LRT traffic signal’s horizontal line at the Eustis Street intersection, there is insufficient evidence that he violated any applicable Minnesota *criminal* statute because his failure to obey the signal was not an intentional or grossly negligent act.